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Supreme Court, U.S.
FILED
MAY 15 1996
CLERK

NO. 95 - 11688

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1995

JAMES HANKINS, SR., MARIAN HANKINS, AND
JIM HANKINS AIR SERVICE, INC.

Petitioners

vs.

FRANK E. MELTON

Respondent

On Petition for Writ of Certiorari
to the Mississippi Court of Appeals

BRIEF IN OPPOSITION

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Counsel of record for Respondent

10 pp

QUESTION PRESENTED

Whether the decisions of the trial court, Mississippi Court of Appeals, and Mississippi Supreme Court, denying Petitioners' request to correct the record on appeal pursuant to Mississippi Rule of Appellate Procedure 10, deprived Petitioner of rights guaranteed under the Fourteenth Amendment of the United States Constitution.

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REASONS FOR DENYING THE WRIT

This Petition does not meet any of the criteria set forth in United States Supreme Court Rule 10. There is no important question of federal law to be settled by this Court. The challenged decisions below do not conflict with any decision of a state court of last resort, or with a decision of a United States Court of Appeals or this Court. There is no compelling reason for the Court to grant this Petition.

Petitioners' Motions to correct the trial transcript were governed below by Mississippi Rule of Appellate Procedure 10(e), which is virtually identical to its federal counterpart. At best, Petitioners are dissatisfied with the manner in which the Mississippi Supreme Court and Court of Appeals applied Rule 10 to their Motions. Rule 10 of this Court expressly states, however, that "a petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

Petitioners attempt to construct a constitutional issue by arguing that the denial of their Motions to supplement the appellate record deprived them of the right of "access to the courts," which is protected under the Fourteenth Amendment's guaranty of due process. Surely, the constitutional right of access to the courts cannot be invoked merely because a party loses a procedural Motion during the course of civil litigation. Rather, the right of access to the courts requires scrutiny of judicial procedures or mechanisms such as filing fees, or a prisoner's lack of access to a law library, which deny a party a "meaningful opportunity to be heard." E.g. Boddie v. Connecticut, 401 U.S. 371 (1971).

Petitioners have had access to every available court, and meaningful opportunities to be heard on the merits of this case at every level: a jury trial, on post-judgment Motion before the trial court, on appeal to the Mississippi Court of Appeals, on

Petition for Rehearing to the Court of Appeals, and on Petition for Writ of Certiorari to the Mississippi Supreme Court. The integrity of the Mississippi appellate courts' decisions on the merits certainly depended on the preparation in the first place of an accurate trial transcript. But each of the courts below also gave Petitioners a meaningful opportunity to be heard regarding their assertions that the trial transcript contained inaccuracies.

Petitioners filed an "Ex Parte Motion for Time to Correct Transcript" in the trial court. The trial court permitted Petitioners to submit a statement of alleged errors in the trial transcript. After Petitioners filed their statement of alleged errors, the Court Reporter reviewed the transcript, and made all proper corrections.

After their appeal was docketed with the Mississippi Supreme Court, Petitioners filed a Motion to Supplement the record pursuant to Rule 10(e) challenging the accuracy of the trial transcript, and asking the Supreme Court to order the Court Reporter to make her tape recording of the trial available for their personal verification. Subsequently, the Mississippi Supreme Court Clerk received a letter from the Reporter (see Appendix) stating that the remaining "corrections" to the transcript requested by Petitioners would represent a substantive change in the testimony actually presented at trial, rather than a correction of the transcript. The Supreme Court denied Petitioners' Motion.

In their subsequent Brief on appeal, Petitioners again argued the inaccuracy of the transcript, and asserted a denial of their right to due process. The Mississippi Court of Appeals, to which the case was referred for decision by the Mississippi Supreme Court, made a finding of fact based on its own review of the transcript that Petitioners' assignment of error regarding the transcript was ill founded.

Notwithstanding the fact that Petitioners had several

meaningful opportunities to be heard regarding the alleged inaccuracies of the transcript, Petitioners argue that their right to Fourteenth Amendment due process was violated by the Mississippi Supreme Court's refusal to order the Court Reporter to make her tape recording of the trial available for Petitioners' review. Such a procedure is neither required nor authorized by Rule 10 of the Mississippi or Federal Rules of Appellate Procedure. The constitutionality and fairness of those rules is unquestioned.

Under the Rules, the official record of live trial testimony is a written transcript prepared and certified by a qualified, disinterested Court Reporter, who may utilize shorthand, and/or various recording devices such as stenographic machines, tape recorders, and computer disks as tools in the preparation of the written transcript. Were this Court to decide that parties to a civil lawsuit may demand an opportunity to personally review a court reporter's notes, tapes, or computer media, lest their Fourteenth Amendment rights be infringed, would be an obvious invitation for chaos. Mississippi and Federal Rules of Appellate Procedure 10 would become a ready source of costly satellite litigation over the accuracy of the transcript, which would undermine the integrity and finality of the civil litigation process.[1]

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[1] Whether the courts below should have ordered the Reporter to make her tapes available pursuant to the Mississippi Constitution and/or the Mississippi Public Records Act was not properly preserved below, and in any event is purely an issue of Mississippi, not federal law. Similarly, Respondents will not respond to Petitioners' arguments concerning the merits of this case, which involved implied warranties of merchantability under Mississippi's Uniform Commercial Code in the context of the sale of an airplane. This too is purely a matter of Mississippi law.

CONCLUSION

This case was decided adversely to Petitioners based on an accurate, carefully critiqued trial transcript. Petitioners' access to the courts and rights to due process have not been infringed. Respondent asks this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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Brief in Opposition
Appendix A

October 26, 1993

Ms. Linda Stone
Mississippi Supreme Court Clerk
P.O. Box 249
Jackson, MS 39205-0249

Re: Hankins et al. v. Frank E. Melton
No. 92-CA-0710

Dear Ms. Stone:

As the record reflects, I reported the trial of this matter and filed the transcript with the trial court. Appellee's counsel has provided me with a copy of Appellant's Motion to Supplement Record Insofar as the Motion alleges that the transcript still contains numerous mistakes, counsel has requested that I respond directly to the Court as to whether or not I stand by the transcript now on file with the Supreme Court.

After the transcript was filed in the trial court, Appellants filed a "Statement of Errors in Transcript of Trial." The "Statement" sets forth numerous alleged errors in the transcript. Upon receipt of that filing I reviewed the trial transcript at every place cited in Appellants' "Statement." I did make a few corrections, all of which were minor in nature. I found Appellants' remaining requested changes unwarranted, and so notified the trial court.

Appellants claim that witnesses said things other than that which they in fact said on the witness stand and which I duly

Appendix A

reported. They suggest that corrections be made because they "did not remember the testimony being given as reported. In other instances they seek to supplement, clarify or change the testimony that was actually given, indicating that the reported testimony was "confusing," "contradictory," or "didn't make sense."

The changes requested by Appellants represent substantive changes in the record presented at trial, In my experience, this is unprecedented.

Having reviewed the transcript after Appellants' filing in the trial court, I am satisfied that it is a complete and accurate transcript of the trial proceedings.

Thank you.

Sincerely,

s/ Sara Sims

Ms. Sara Sims

(currently on maternity leave)
1139 Greenbriar Street
Jackson, MS 39211

cc: Hon. Thomas J. Lowe, Jr.
Hon. Joshua J. Wiener

Exhibit "B"